

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

### **SPECIAL ORDER BY CONSENT WITH ROYSTER-CLARK, INC.**

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of §62.1-44.158(a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and Royster-Clark, Inc., for the purpose of resolving certain violations of environmental law and/or regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in the Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in the Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Royster” means Royster-Clark, Inc., certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. “Regulations” means 9 VAC 25-31-10 *et seq.* - Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
8. “Permit” means VPDES Permit No. VA0003875.

## **SECTION C: Findings of Fact and Conclusions of Law**

1. Royster-Clark owns and operates a fertilizer manufacturing, transfer and storage facility, located at 1400 Weaver Lane in Chesapeake, Virginia. The facility is located on Newton Creek and the Southern branch of the Elizabeth River, which is a tributary to the Chesapeake Bay. The discharge of contaminated storm water runoff from the facility is the subject of the Permit which was reissued on January 23, 2001 and expires on January 23, 2006.
2. Royster is subject to a consent special order that was executed on December 17, 1997 which required Royster to come into compliance with its Permit effluent limitations for phosphorus.
3. Section 62.1-44.5 of the Code, §9 VAC 25-31-50 of the Regulations and Part III.L of the Permit requires that Royster comply with all conditions of the Permit.
4. Part I.A of the permit requires the discharge at outfalls 001, 002 and 003 to have a pH between 6.0 and 9.0. Royster violated the pH effluent limitation in March, June, July, August, September and November of 2000 and in the second and third quarters of 2001.
5. Part I. A of the Permit also requires Royster to sample their discharge and report the results in a monthly discharge monitoring report (DMR). The Company failed to sample for any parameters in December of 2000 and did not submit a DMR for the fourth quarter of 2001.
6. Part I.B of the Permit contains sampling requirements and permit limits for whole effluent toxicity at outfalls 002 and 003. The report due in January, 2002 was submitted on June 11, 2002 and indicated that the whole effluent toxicity limit at outfall 003 was exceeded.
7. Part I.C. of the Permit contains a four year compliance schedule for upgrading the facility to meet ammonia limits at outfalls 001, 002, and 003. The schedule requires the submittal of an upgrade plan by April, 2001. The plan and associated progress reports have not been submitted.
8. Part I.E. of the Permit requires annual acute toxicity testing of outfall 001 and an annual report on outfalls 001, 002 and 003 for storm water evaluation. The first toxicity test and annual report that were due in February, 2002. The toxicity test was submitted on June 11, 2002 but the report has not been submitted.
9. The violations described above are cited in the following Notices of Violation issued to Royster: No. 00-08-TRO-002, issued on August 22, 2000; No. 01-04-TRO-002, issued on April 10, 2001; No. 01-06-TRO-009, issued on June 28, 2001; No. 01-08-TRO-003, issued on August 6, 2001; No. 01-09-TRO-002, issued on September 20, 2001; No. 01-10-TRO-004, issued on October 22, 2001; No. 01-12-TRO-003, issued on December 17, 2001; No. 02-01-TRO-002, issued on January 31, 2002; No. W2002-03-T-0001, issued on March 22, 2002; No. W2002-04-T-0003, issued on May 6, 2002; and, No. W2002-05-T-0003, issued on May 31, 2002.

## **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code § 62.1-44.15(8a) and (8d), orders Royster, and Royster agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders Royster, and Royster voluntarily agrees, to pay a civil charge of \$10,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include Royster's Federal Identification Number. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

## **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Royster, for good cause shown by Royster, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above cited Notices of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Royster admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Royster consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Royster declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Royster to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing

herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Royster shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Royster shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Royster shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Royster. Notwithstanding the foregoing, Royster agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Royster. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Royster from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. The consent special order executed on December 17, 1997 is cancelled.
13. By its signature below, Royster voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2002.

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Robert G. Burnley, Director  
Department of Environmental Quality

Royster voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia

City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_ day of  
\_\_\_\_\_, 2002, by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ of Royster, on behalf of the Corporation.  
(title)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_.

APPENDIX A  
ROYSTER-CLARK, INC.

Royster shall:

1. Mail all submittals and reports required by this Appendix A to:  
Francis L. Daniel, Regional Director  
DEQ, Tidewater Regional Office  
5636 Southern Blvd.  
Virginia Beach, VA 23462
2. Comply with all conditions of the Permit.
3. By September 1, 2002, submit a plan and implementation schedule for compliance with the pH effluent limitations and ammonia at outfalls 001, 002, and 003. Implement the plan upon its approval by DEQ.
4. Comply with the pH effluent limitation and the final ammonia effluent limitation upon completion of the upgrade.
5. Submit quarterly status reports on the progress of the upgrade by the 10<sup>th</sup> of January, April, July and October. The first status report is due on January 10, 2003.
6. By August 1, 2002, submit the annual acute toxicity test report for outfall 001 and the annual report for outfalls 001, 002 and 003 required by Part I.E of the Permit.